

**FILED BY CLERK**

**JAN -5 2012**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

DONALD D. BAILEY,	)	
	)	
Plaintiff/Appellant,	)	2 CA-CV 2011-0034
	)	DEPARTMENT A
	)	
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
JON D. HERMANSON; and RAUCH,	)	Rule 28, Rules of Civil
HERMANSON & EVERROAD, LTD.,	)	Appellate Procedure
	)	
Defendants/Appellees.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20098980

Honorable Kenneth Lee, Judge

**AFFIRMED**

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Donald D. Bailey

Tucson  
In Propria Persona

Sanders & Parks, P.C.

By Jay C. Jacobson and Jasmina Richter

Phoenix  
Attorneys for Defendants/Appellees

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B R A M M E R, Judge.

¶1 Donald Bailey appeals from the trial court’s order granting summary judgment in favor of defendants Jon D. Hermanson and Rauch, Hermanson & Everroad, Ltd. (Hermanson).<sup>1</sup> We affirm.

### **Factual and Procedural Background**

¶2 Bailey brought an action against Hermanson alleging he had been negligent in providing expert testimony on Bailey’s behalf during a 2005 tax refund action. The trial court entered summary judgment in favor of Hermanson and against Bailey, dismissing with prejudice all counts against Hermanson pursuant to Rule 54(b), Ariz. R. Civ. P. This appeal followed.

### **Discussion**

¶3 On appeal, Bailey has failed to articulate “concisely and clearly” a statement of facts or an argument containing his contentions. Ariz. R. Civ. App. P. 13(a)(4), (6). His statement of facts consists solely of a list of documents he asserts were filed in the action. The argument section of his opening brief does not identify clearly his contentions and generally lacks citation to legal authority supporting them. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument “shall contain” contentions and reasons, “with citations

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<sup>1</sup>In his notice of appeal, Bailey failed to identify the “judgment or part thereof appealed from,” as required by Rule 8(c), Ariz. R. Civ. App. P. However, we construe the notice of appeal as sufficient because it does not appear to have “misled [] or prejudiced an opposing party.” *Hill v. City of Phx.*, 193 Ariz. 570, ¶ 10, 975 P.2d 700, 702-03 (1999).

to the authorities, statutes and parts of the record relied on”). He also fails to identify the proper standards of review on appeal for the eighteen issues he purports to raise. *Id.* (standard of review “shall be identified” at outset of discussion of each contention). Although Bailey contends his reply brief is “much better,” arguments raised for the first time in the reply brief are waived on appeal. *See Romero v. Sw. Ambulance*, 211 Ariz. 200, n.3, 119 P.3d 467, 471 n.3 (App. 2005); *see also Meiners v. Indus. Comm’n*, 213 Ariz. 536, n.2, 145 P.3d 633, 635 n.2 (App. 2006) (waiver policy avoids surprise and allows input from parties). Because Bailey has waived his arguments on appeal, we do not address them further.<sup>2</sup> *See Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (argument not developed or supported by authority deemed waived and not considered by court).

### **Disposition**

¶4 For the foregoing reasons, we affirm. Hermanson requests an award of attorney fees on appeal, but has failed to specify a statutory basis for the award. Accordingly, we deny the request. *See Roubos v. Miller*, 214 Ariz. 416, ¶ 21, 153 P.3d

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<sup>2</sup>Hermanson requests that we impose sanctions against Bailey because his opening brief “fall[s] below the minimum standard for an appellate brief” and “raise[s] issues unsupported by a reasonable legal theory.” *See* Ariz. R. Civ. App. P. 25. Hermanson has not explained in sufficient detail why sanctions should be awarded and, in our discretion, we decline to impose them. *See Villa de Jardines Ass’n v. Flagstar Bank, FSB*, 227 Ariz. 91, ¶ 26, 253 P.3d 288, 296 (App. 2011) (we impose sanctions under Rule 25 with great reservation).

1045, 1049 (2007) (party requesting fees must state statutory or contractual basis for award).

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge